

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220071 **DATE:** November 8, 1985
MATTER OF: Satellite Services, Inc.

DIGEST:

An agency may properly determine a bidder to be nonresponsible and reject a bid based on a finding that the bidder's individual sureties on a bid bond are unacceptable because they failed to disclose outstanding bond obligations on their Affidavits of Individual Surety.

Satellite Services, Inc. (SSI) protests the rejection of its bid under invitation for bids (IFB) No. F04605-85-B0033, issued by the Department of the Air Force, March AFB, California, for transient aircraft maintenance services. The Air Force rejected SSI's bid on grounds that the bid bond submitted with it was deficient. We deny the protest.

Under the IFB, bidders were required to submit bid bonds equal to 100 percent of their bid prices. Because SSI was bonded by individuals rather than a corporate surety, a completed Affidavit of Individual Surety (Standard Form 28) for each of its two individual sureties also was required. Item 10 of the Affidavit specifically required the individual sureties to disclose all other bonds on which they were listed as sureties at the time they executed the bid bond for SSI.

When the low bidder under the solicitation was permitted to withdraw from the competition because of a mistake in its bid, SSI, as second-low, appeared to be next in line for award. The contracting officer, however, subsequently found the firm to be nonresponsible because its bid bond failed to provide good and sufficient surety inasmuch as its individual sureties, as a result of other obligations, exceeded their bonding capabilities. The contracting officer also based his determination on the fact that the firm's individual sureties failed to disclose other outstanding obligations on this and other bids as specifically required. The contracting officer thereupon rejected SSI's bid.

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We need only consider the contracting officer's second basis for rejecting SSI's bid. As stated above, Item 10 of the Affidavit specifically required the individual sureties to disclose "all other bonds." Both of SSI's individual sureties responded by inserting the word "none" in Item 10. Soon after bid opening, the contracting officer discovered, upon checking with other Air Force installations, that both sureties failed to disclose other bonds on which they were sureties at the time they executed the bonds for SSI. In fact, at least the following bond obligations of the sureties were outstanding at the time of the contracting officer's informal check with the Air Force installations (the contracting officer only checked with Air Force installations and did not check with other government installations):

<u>CONTRACT AMOUNT</u>	<u>PERFORMANCE BOND</u>	<u>PAYMENT BOND</u>	<u>BOND COVERAGE</u>
Pease AFB (\$388,291.68)	50%	20%	\$271,804.18
Charleston AFB (\$483,247.00)	25%	25%	\$241,623.50
K.I. Sawyer AFB (\$190,627.23)	50%	50%	\$190,627.23

The contracting officer also found these same sureties firmly obligated on at least 3 other bid bonds totaling \$157,189.60. According to the contracting officer, SSI's individual sureties indicated in Item 10 of these other bid bonds that they had no outstanding bond obligations whatsoever. Based on his informal survey, the contracting officer states that the sureties' obligations exceed their bonding capacity. SSI does not deny the existence of these other bond obligations but generally argues that these obligations should be "ororated" because substantial work has been completed under the contracts.

In response to why the sureties failed to disclose all bond obligations, SSI states that it had been told by unnamed Air Force contracting officers in the past that Item 10 of the Affidavit should only be used to list bid bonds rather than performance and payment bonds. In response to why the sureties did not list at least 3 bid bonds, SSI states that it "was not the apparent low bidder

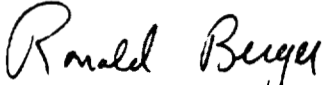
on any of those solicitations and in fact was the third, fourth, and fifth bidder and not in line [for] an award." SSI acknowledges that it was not initially in line for award under this solicitation either.

A surety must disclose all outstanding bond obligations, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed determination of the surety's financial soundness. Dan's Janitorial Service, Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217. Since Item 10 of the Affidavit provides space for the surety to list "all other bonds on which [he is] surety," we believe that the duty of the individual surety to disclose all such obligations, without exception, is clear. Singleton Contracting Corp., B-216536, Mar. 27, 1985, 85-1 CPD ¶ 355. Moreover, a contracting agency may consider the failure of a surety to disclose fully all outstanding bond obligations as a factor in its responsibility determination. Id.

In reviewing a bidder's responsibility, the contracting officer is vested with a wide range of discretion and business judgment, and this Office will defer to the contracting officer's decision unless the protester shows that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. C.W. Girard, C.M., 64 Comp. Gen. 704 (1984), 84-2 CPD ¶ 704.

We believe that, regardless of the actual liability that may remain on any outstanding bonds, a pattern of nondisclosure of the bond obligations of SSI's individual sureties on this and other bids provides the contracting officer with a reasonable basis upon which to find the protester nonresponsible. In this connection, we further believe that any determination by the contracting officer of the adequacy of bonding must be made based on a full disclosure of the individual surety's undertakings; it is not a determination that can be made by a surety's not disclosing the existence of potential liability on outstanding bonds. See Consolidated Marketing Network, Inc.--Request for Reconsideration, B-218104.2, June 12, 1985, 85-1 CPD ¶ 675.

The protest is denied.


For Harry R. Van Cleave
General Counsel